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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,849	07/16/2004	Simone Maria Schleker	200612.00001	6440

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EXAMINER	
THAKUR, VIREN A	

ART UNIT	PAPER NUMBER
1794	

NOTIFICATION DATE	DELIVERY MODE
04/03/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@hahnlaw.com
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Office Action Summary	Application No.	Applicant(s)	
	10/501,849	SCHLEKER ET AL.	
	Examiner	Art Unit	
	VIREN THAKUR	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 December 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *20-24 and 31-34* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *20-24 and 31-34* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 20-24 and 31-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, for the reasons given in the previous Office Action.

The reasons given in the previous Office Action that have been maintained have been restated below.

Claims 20 and 31 recite the limitations “temperature-sensitive ingredients” and “temperature insensitive ingredients.” These limitations are not clear, in the claims, since the product and the method of using the product, as claimed incorporate the step of heating both of the temperature sensitive and the temperature insensitive ingredients. Therefore, both sets of ingredients are still sensitive to temperature, since both require heating to cook or to enhance the olfactory properties of the ingredients. Furthermore, depending on the temperatures of the ingredients, all food components that require cooking or heating would have been sensitive to temperature to some degree. These limitations are further unclear since applicant has not provided definitions for what are considered temperature sensitive and temperature insensitive ingredients.

Claim 20 further recites "after mixing same with the first batch in the aqueous solution in combination with the inherent taste and odor of staple ingredients." This limitation is unclear, as to whether there are any staple ingredients or whether only the inherent taste and odor of staple ingredients is within the mixture.

Claims 23 and 34 recite the limitation "fresh staple ingredients." The claims are unclear as to what is considered a fresh staple ingredient, especially since the term fresh, is subjective.

Claims 22 and 33 recite the limitation "wherein the step of mixing the aqueous phase with the flavored cooking oil and/or fat is done before cooking the staple ingredients." It is unclear as to how this step can be performed, since both the independent claims from which the recited claims depend each recite combining the temperature sensitive ingredients with the staple ingredients prior to mixing with the flavored oil and/or fat. Claim 20 recites wherein the temperature sensitive ingredients are absorbed with the staple ingredients and then the aqueous solution is mixed with the flavored cooking oil. Claim 31 recites wherein the aqueous solution is heated and the staple ingredients are cooked with the first batch." Therefore it is not clear as to how the flavored cooking oil and/or fat can be combined with the staple ingredients prior to the addition of the temperature sensitive ingredients, as recited in claims 22 and 33.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 20-21, 24 and 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Classic Indian Vegetarian and Grain Cooking (referred to as *Classic Cooking)* in view of Shi (WO9118792), Kira (JP 6197681) and Koshida et al. (US 4267199), for the reasons given in the previous Office Action, mailed June 27, 2008.

It is noted that claims 20 and 31 recite the limitation “herbs and/or spices." It is noted that *Classic Cooking* teaches the concept of separately adding a first batch of spices and/or herbs to a first process of cooking in an aqueous solution and a second batch of spices and/or herbs to be cooked in oil and/or fat, as discussed in the previous Office Action, mailed June 27, 2008. Regarding the use of the terms temperature sensitive and temperature insensitive herbs and/or spices, it is noted that since *Classic*

Cooking teaches herbs and/or spices that are cooked in water and those that are cooked in oil. Since in each case the purpose of the herbs and/or spices is to add flavor, each are considered to not lose their taste when heated in their respective environments.

5. Claims 22 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 20-21, 24 and 31-32, above and in further view of GoogleGroups (Chanterelles) for the reasons given in the previous Office Action, mailed June 27, 2008.

6. Claims 23 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 20-21, 21 and 31-32, above and in further view of GoogleGroups (Garlic Chicken) for the reasons given in the previous Office Action, mailed June 27, 2008.

7. Claims 20-21, 24 and 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koshida et al. (US 4267199) in view of Classic Indian Vegetarian and Grain Cooking (referred to as *Classic Cooking)* and Shi (WO9118792) for the reasons given in the previous Office Action, mailed June 27, 2008.

8. Claims 22 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 20-21, 24 and 31-32, above in paragraph 12 and in further view of GoogleGroups (Chanterelles) for the reasons given in the previous Office Action, mailed June 27, 2008.

9. Claims 23 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 20-21, 21 and 31-32, above, in paragraph 12 and in further view of GoogleGroups (Garlic Chicken) for the reasons given in the previous Office Action, mailed June 27, 2008.

Response to Arguments

10. As a result of the cancellation of claim 25, the rejection of claim 25 under 35 U.S.C. 112, first, second paragraph, 35 U.S.C. 101 and 35 U.S.C. 103(a) have been withdrawn. As a result of the amendment to the claims, which limit the ingredients to herbs and/or spices, the rejection of claims 20-25 and 31-34 under 35 U.S.C. 112, first paragraph scope of enablement has been withdrawn. As a result of the cancellation of the limitation "high gustatorial quality" the rejection of claim 20 under 35 U.S.C. 112, second paragraph, for this limitation, has been withdrawn. The rejection of claims 21, 22, and 33 for lacking sufficient antecedent basis has been withdrawn as a result of the amendment to the claims.

11. Regarding the rejection of claims 20, 25 and 31 under 35 U.S.C. 112, second paragraph for the limitations "temperature sensitive ingredients" and "temperature insensitive ingredients" it is noted that applicants urge on pages 5-6 of the response that temperature insensitive herbs and spices are those that do not lose their taste and aromatic properties upon heating, and temperature sensitive herbs and spices are those that do lose their taste and/or aromatic properties if heated to too high of a temperature. Applicants further urge that the maximum temperature of the aqueous solution is the boiling point of water and thus limits the temperature to which the herbs and spices are heated.

These arguments have been considered but are not deemed persuasive. These urgings are Applicants' opinion, not supported by any convincing evidence. Also, since all the spices can be heated to some degree, it is not clear what the significance of temperature sensitive versus temperature insensitive really means, especially since all herbs and spices would lose their taste and/or aromatic properties if heated to too high of a temperature.

12. Applicants' arguments with respect to claims 20, 25 and 31 being rejected under 35 U.S.C. 112, second paragraph for missing essential steps has been considered and is persuasive. Applicants urge that the ordinarily skilled artisan would know to open the packages. The rejection is withdrawn.

13. Upon reconsideration, the rejection of claims 20 and 31 under 35 U.S.C. 112, second paragraph for the limitation “aqueous solution and cooking any staple ingredients included with the first batch” being indefinite as to whether the staple ingredients are in the first batch package has been withdrawn. Lines 11-12 of claim 31 states that staple ingredients are included in at least one of the two packages and claim 20 does not recite that the staple ingredient is in the package.

14. With regard to the rejection of claim 20 under 35 U.S.C. 112, second paragraph for the limitation “after mixing same with the first batch in the aqueous solution in combination with the inherent taste and odor of staple ingredients," Applicants urge that one skilled in the culinary arts would know that “the inherent taste and odor of staple ingredients” must include the staple ingredients themselves. This argument has been considered but is not deemed persuasive. It is noted that flavorants that simulate the taste and odor of staple ingredients can also be employed.

15. Regarding the rejection of claims 22 and 33 under 35 U.S.C. 112, second paragraph for the mixing of the aqueous solution and the flavored oil before cooking the staple ingredients, Applicants urgings are not persuasive.

It is noted that the independent claims recite a combination of cooking the staple ingredient with the temperature sensitive herbs and/or spices of the first batch. For instance, if in claim 33, if the aqueous solution and temperature sensitive herbs and or spices with the flavored cooking oil and/or fat were first mixed, then the claim is not

clear as to how "heating the aqueous solution to absorb the temperature sensitive herbs and/or spices into the aqueous solution and cooking any staple ingredients included with the first batch" could be performed. With respect to claim 22, if the mixing of the aqueous solution with the flavored cooking oil and/or fat is done before cooking the staple ingredients, then the claim would not be clear as to how "absorbing the temperature sensitive herbs and/or spices contained in the first batch together with the staple ingredients to be cooked in the aqueous solution" could be performed since the aqueous solution is already mixed with the flavored cooking oil.

16. Upon reconsideration, the rejection of claims 23 and 34 under 35 U.S.C. 112, second paragraph for reasons similar to those discussed above with respect to claims 22 and 33 has been withdrawn.

17. Regarding the rejection of claims 23 and 34 under 35 U.S.C. 112, second paragraph for the limitation "fresh staple ingredients" it is noted that applicants urge that the term "fresh staple ingredients is well known and definite to one skilled in the culinary arts." This argument has been considered but is not deemed persuasive, since the variability between what can be considered fresh is still subjective and therefore this limitation is still considered indefinite.

18. On pages 6-7 of the response, Applicant urges that the combination of references do not disclose the dividing the herbs and spices into a package of temperature sensitive herbs and spices and a package of temperature insensitive herbs

and spices; nor do any of the references disclose forming an aqueous phase with the temperature sensitive ingredients and an oil/fat phase with the temperature insensitive ingredients.

These arguments have been considered but are not deemed persuasive. It is noted that *Classic Cooking* teaches an oil phase into which spices are cooked (See page 1 of 2 - "While the lentils are cooking…") as well as an aqueous solution heated with the addition of herbs and spices such as tumeric and green chilies (See page 1 of 2 - "cooking the lentils with seasoning such as tumeric and green chilies"). Both of these examples in *Classic Cooking* teach an aqueous solution and an oil phase. Regarding the separation of packaging of temperature sensitive and temperature insensitive herbs and spices, it is noted that the secondary references relied on teach that it has been conventional in the art to provide a "meal kit" which follows a set of cooking instructions includes different ingredients that are to be separately incorporated into the cooking process. In view of the secondary references to Shi, Kira and Koshida, to therefore separately package a set of herbs to be used in the aqueous solution and another set of herbs and/or spices to be used in the oil cooking would have been obvious to one having ordinary skill in the art, for the purpose of making a pre-packaged product to be used to created the meal, as discussed in the previous Office Action, mailed June 27, 2008.

Conclusion

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIREN THAKUR whose telephone number is (571)272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571)-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/
Primary Examiner, Art Unit 1794

/V. T./
Examiner, Art Unit 1794